

Pohle, David

From: V. Fichera <vmfichera@gmail.com>
Sent: Friday, August 21, 2015 7:04 PM
To: Mann, Katherine
Cc: Pohle, David; Modigliani, Justine; McKenna, Douglas
Subject: Fwd: Following up on trickles of information from DEC concerning the EPA/DEC meeting in Martville on Aug 21, 2015

----- Forwarded message -----

From: **V. Fichera** <vmfichera@gmail.com>
Date: Fri, Aug 21, 2015 at 5:54 PM
Subject: Following up on trickles of information from DEC concerning the EPA/DEC meeting in Martville on Aug 21, 2015
To: modigliani.justine@epa.gov, Pohle.David@epa.gov

Dear Justine Modigliani and David Pohle:

First of all, the DEC Region 7 Permit Administrator has referred me to the EPA for all questions with respect to your inspection of the 13181 Sanford Road, Martville, New York site for the wetland and Sterling Creek fill, siltation and/or sedimentation complaints which I filed with both agencies. Therefore I am sending along this email to you directly.

As I mentioned to Justine Modigliani who was kind enough to take my call during her vacation today, I met today, August 21, 2015, with DEC Region 7 Director Ken Lynch, Permit Administrator David Bimber, and DEC Counsel Barbara McGuin.

During our meeting, the fact of your joint inspection of the site this morning was brought up and when I complained that the permit applicant had taken no steps to control runoff by, for example, establishing berms, the Permit Administrator told me that the applicant would have been violating the state's mining law if he had done that before being issued a mining permit.

I wish to inform you that I can find no justification for that statement in the law. Indeed, as is explained at the DEC Website at this URL (<http://www.dec.ny.gov/lands/24993.html>), only if the berms needed more than 1000 tons of excavated material or 750 cubic yards from the site would he have needed a permit. Because his proposed mine would excavate much more than that, it will indeed need a permit for the larger planned excavation. The land owner could have taken the necessary amount from the existing gravel pit on that property and would almost certainly have been violating no law in doing so, provided, of course, that he was within the 1000 tons/750 cubic yards limits of the state's mining laws.

What should be addressed by the DEC, and which has still not been addressed, is the fact that the permit applicant was clear-cutting the land which he explicitly stated in his Mined Land Use Plan would not be cut until just before each segment of the large mining project was progressing, in order to maintain a sound barrier, etc., etc., etc. Instead, he had clear-cut ten or more acres during the period of his application and before the SEQR Negative Declaration was issued, a fact which was documented in the Phase B archaeology report by Nikki Waters.

I will look forward to hearing back from you on the status of my complaint and hope to have access to pictures as well as a formal report on the health of the wetland and the Sterling Creek. I just want to ensure that if you

are planning on overlooking fill/siltation/sedimentation in the wetland or the tributary of Lake Ontario on the basis of an ad hoc verbal explanation that the state's mining laws prohibit the land owner from taking the usual and, indeed, promised storm water pollution control measures, I will require a complete legal citation to justify the EPA's abandonment of the Federal laws and jurisdiction in this matter.

Thank you for your anticipated assistance in this matter of the protection of the Lake Ontario tributary the Sterling Creek and its wetlands in Sterling, New York.

Yours truly,

Dr. V. M. Fichera (PhD)